

MAR 28 1983

ALEXANDER L. STEVANS
CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1982

ROBERT J. ADAMS, et al.,

Petitioners,

vs.

**GOULD, INC. and FIRST TRUST COMPANY
OF ST. PAUL, MINNESOTA,**

Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO
THE UNITED STATES COURT OF APPEALS FOR
THE THIRD CIRCUIT

RESPONDENTS' BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

ROBERT E. MANN

55 East Monroe Street
Suite 4200

Chicago, Illinois 60603
(312) 346-8000

Attorney for Respondents

Of Counsel:

**MARK A. LIES, II
J. STEPHEN POOR
SEYPARTH, SHAW, FAIRWEATHER
& GERALDSON
55 East Monroe Street
Suite 4200
Chicago, Illinois 60603
(312) 346-8000**

**JOHN MARKELE, JR.
MARK M. WILCOX
DRINKER BIDDLE & REATH
Philadelphia National
Bank Building
Broad & Chestnut Streets
Philadelphia, PA 19107
(215) 988-2700**

**RICHARD H. KYLE, JR.
BRIGGS & MORAN
First National Bank Building
St. Paul, Minnesota
(612) 291-1215**

Pursuant to Rule 28.1 of the Rules of the Court, the following is a listing naming all parent companies, subsidiaries (except wholly-owned subsidiaries), and affiliates of Respondent Gould, Inc. and First Trust Company of St. Paul, Minnesota.

**Certification of Parent Companies and
Affiliates (except wholly-owned subsidiaries)**

Parent Company—Gould, Inc. (a Respondent herein)

Affiliates:

<u>Name</u>	<u>Place of Incorporation</u>
AMI Liegenschaftsverwaltungs-Gesellschaft m.b.H.....	Austria
AMI Micro-systems GmbH.....	West Germany
AMI Microsystems, S.A.R.L.	France
AMI Microsystems, S.R.L.	Italy
Austria Microsysteme International Gesell- schaft M.B.H.	Austria
Gould H.B. Medical Products Ltd.	Japan
Compagnie Francaise d'Electro-Chimie.....	France
Accumulateur Chargeur Dary.....	France
Compagnie Francaise d'Accumulateurs Elec- triques.....	France
Outarex S.A.R.L.	France
SIDACS.A.R.L.	France
S.I.D.M.A.P.	France
Societe Nouvelle A.M.B.S.A.R.L.	France
Nikko Gould Foil Company, Limited	Japan
Phoenix Y-M Corp.	New Hampshire

Parent Company—First Bank System, Inc.

**Subsidiary—First Trust Company of St. Paul, Minnesota
(a Respondent herein)***

* First Trust serves as trustee of various trusts which hold stock as part of their corpus, and as such has or may hold control over various corporations and affiliates. All such stock is held solely as an incident to First Trust's trust powers. First Trust therefore disclaims beneficial ownership with respect to same.

**COUNTERSTATEMENT OF THE
QUESTION PRESENTED**

Whether the Third Circuit's Decision entering summary judgment against Petitioners with respect to their attempt to relitigate issues previously resolved by arbitration is in direct conflict with the decisions of this Court.

TABLE OF CONTENTS

	PAGE
COUNTERSTATEMENT OF THE QUESTION PRESENTED	ii
COUNTERSTATEMENT OF THE CASE	2
1. Nature of the Case.....	2
2. Facts.....	3
3. Decisions Below.....	5
REASONS WHY THE PETITION SHOULD NOT BE GRANTED	6
A. Petitioners' Claims Were Resolved Via Arbitration; Arbitration Is the Preferred Forum for Resolution of Labor Contract Disputes	6
B. Federal Courts Are Without Jurisdiction to Relitigate Labor Contract Disputes Previously Resolved in Arbitration	8
C. Petitioners Are Bound by the Results of the Arbitration Award.....	9
D. Petitioners Have Not Raised Any Other Issue Warranting Review	9

TABLE OF AUTHORITIES

PAGE

A.

Cases

<i>Allied Chemical and Alkali Workers v. Pittsburgh Plate Glass Co.</i> , 404 U. S. 117 (1971).....	9
<i>Hauser v. Farwell, Ozmun, Kirk & Co.</i> , 299 F. Supp. 387 (D. Minn. 1969)	5
<i>S.E.I.U., Local 36 v. Office Center Services</i> , ____ F. 2d ____, 109 LRRM 2552 (3d Cir. 1982)	9
<i>United Parcel Service v. Mitchell</i> , 451 U. S. 56, 101 Sup. Ct. 1559 (1981)	8, 9
<i>United Steelworkers v. Enterprise Car & Wheel</i>	8
<i>United Steelworkers v. Warrior & Gulf Navigation Co.</i> , 363 U. S. 574 (1960)	7

B.

Statutory Authorities

29 U. S. C. §§ 1301 <i>et seq.</i> , § 173.....	2
---	---

IN THE
Supreme Court of the United States

OCTOBER TERM, 1982

ROBERT J. ADAMS, et al.,

Petitioners,

vs.

GOULD, INC. and FIRST TRUST COMPANY
OF ST. PAUL, MINNESOTA,

Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO
THE UNITED STATES COURT OF APPEALS FOR
THE THIRD CIRCUIT

**RESPONDENTS' BRIEF IN OPPOSITION TO
PETITION FOR WRIT OF CERTIORARI**

Respondents (hereinafter, "Gould" and "First Trust," respectively) oppose the Petition for Writ of Certiorari. The decision of the Court of Appeals plainly rests upon well settled legal principles; the case presents no question of importance sufficient to warrant the attention of this Court.

COUNTERSTATEMENT OF THE CASE

1. Nature of the Case

Petitioners originally filed this suit in the federal District Court for the Eastern District of Pennsylvania. They claimed, under various theories, that their former employer Gould unlawfully had deprived them of vested pension benefits. First Trust was named in the suit because it was trustee of pension funds in question.¹

Gould and First Trust moved for summary judgment in the District Court, relying upon an award rendered in an arbitration proceeding held some two years earlier between Gould and Petitioners' union, United Automobile, Aerospace and Agricultural Implement Workers of America and its Local Union No. 416 ("UAW"). The central issue raised by Plaintiffs' lawsuit had been raised and resolved by the arbitrator's award. The District Court denied the motion, however, but certified to the Third Circuit Court of Appeals the following question:

"Whether plaintiffs are bound by the results of an arbitration between their employer and their collective bargaining representative and thereby barred from this suit."

(App. 3)

The Third Circuit answered the question in the affirmative, ordered the District Court to enter summary judgment in favor of Gould and First Trust, and denied petitions for rehearing and rehearing *en banc* (App. 3-14, 33-35).

Petitioners then filed the instant Petition for Writ of Certiorari.

¹ The Pension Benefit Guarantee Corporation ("PBGC"), established pursuant to the Employment Retirement Income Security Act of 1974, 29 U. S. C. §§ 1301 *et seq.*, originally was a named defendant but was dismissed on motion because the plan which forms the basis of Petitioner's claim was found to have been terminated prior to effective date of that legislation (App. 28-30).

2. Facts

Gould and UAW were parties to a series of collective bargaining agreements negotiated on behalf of Petitioners and other Gould employees working at Gould's Wilkening, Pennsylvania piston ring plant from 1962 until 1974. The general agreements incorporated by reference a UAW-negotiated Pension Agreement ("UAW Pension Agreement" herein).

Adverse market conditions (App. 4) forced Gould to phase out operations and eventually close the plant during the early part of 1974. Earlier, during the period October-December, 1973, Gould officials had conferred with UAW staff representatives, shop stewards and other union representatives about the impending phaseout of operations. UAW demanded, during those discussions, that Gould fully fund the UAW Pension Agreement when the plant closed. Gould refused the demand because, by terms of the Agreement, Gould had been obligated only to fund on a "sound actuarial basis." In turn, UAW retained counsel and filed a grievance under the contract grievance procedure claiming that Gould's refusal of full funding violated the UAW Pension Agreement. Gould denied the grievance. UAW then appealed to binding arbitration as provided for in the Gould-UAW collective bargaining agreement.

The appeal was perfected while plant operations remained in progress and while Petitioners remained in active employment.

Hearings were held before impartial arbitrator and Professor John Perry Horlacher.² UAW was represented by a prominent labor relations attorney, by a UAW assistant general

² Professor Horlacher at the time was Chairman of a University of Pennsylvania academic department, former Executive Secretary of the Labor Relations Council, Wharton School of Business, and former Vice President of the National Academy of Labor Arbitrators (App. 4); *Labor Arbitration Cumulative Digest and Index*, BNA Digest, Volumes 40-41-50, p. 1231 (1969).

counsel, by an actuary and by Local Union officers and shop stewards.

Arbitrator Horlacher issued his findings and award on November 24, 1975. He rejected UAW's contention that Gould was obligated to fully fund the UAW Pension Agreement Trust. He did find, however, that Gould had relied upon improper actuarial calculations in making certain contributions in prior years and ordered that Gould make additional funds available, for participants' pension entitlements, on the basis of revised actuarial calculations which he described.

Gould honored the award. Its actuary calculated that the Arbitrator's order required that approximately \$570,000 additional funds be made available. UAW's actuary reviewed the Gould calculations and agreed that they complied with the order. UAW, in turn, gave Gould a release of all claims arising under the grievance (and award) following agreement concerning procedures for converting the additional contribution into pension payments.

The procedural agreement was predicated upon that part of the Arbitrator's Award which directed that the additional monies be applied in line with provisions of the UAW Pension Agreement "Distribution upon Termination" provisions.³ The additional funds, together with funds previously contributed, were insufficient, however, to provide pensions for Petitioners, who, as "vested deferred" participants, were within the second tier of priority under the Agreement.

³ The Agreement provides:

Section 7.2 Distribution upon Termination. Upon the termination of the plan with respect to any group of employees, that part of the assets available under the method of funding in effect upon the date of termination which is allocable to the terminated group shall be applied, to the extent that such assets are sufficient, so as to provide

(Footnote continued on following page.)

Two years and six months after the Award was issued, Petitioners filed suit seeking, as did the grievance which UAW had filed and arbitrated, full funding of all pensions.

3. Decisions Below

A. *District Court.* The District Court rejected Gould and First Trust's argument that the Arbitration Award barred the suit. Essentially, the Court concluded that arbitration is a form of bilateral negotiation. To that premise, the Court applied the familiar principle which holds that a union is without legal authority to diminish the vested rights of those it represents by negotiation. *Hauser v. Farwell, Ozmun, Kirk & Co.*, 299 F. Supp. 387 (D. Minn., 1969) was the precedent relied upon by the District Court.⁴

B. *Court of Appeals.* The Court of Appeals readily distinguished *Hauser* from the case at bar, noting that the

(Footnote continued from preceding page.)

retirement benefits (based upon service credited to the date of termination) for participants in the following order of precedence:

(a) to continue the payment of retirement benefits to retired participants, in full if the available assets be sufficient, otherwise on a proportional basis;

(b) to provide for the deferred payment of retirement benefits, beginning on their respective normal retirement dates, to inactive participants and active participants having vested interests in the plan, in full if the remaining assets be sufficient, otherwise on a proportional basis; and

(c) to provide for the deferred payment of retirement benefits, beginning on their respective normal retirement dates, to active participants not having vested interest in the plan, in full if the remaining assets be sufficient, otherwise on a proportional basis.

⁴ In *Hauser*, the Court was presented with a post-business termination agreement between an employer and union to reduce the pensions of certain employees in favor of providing pensions for other employees who otherwise would have received no pensions. No arbitration was involved.

process of *negotiation* is clearly distinct from the process of *arbitration*, which is a method of adjudication (App. 6-8). As noted above, the Court then went on to apply the hard tenet of labor law—frequently enunciated by this Court and all other federal courts—holding that arbitration is the preferred method of adjudicating issues involving rights and liabilities arising under labor agreements (App. 9-10). Finally, the Court found that the particular arbitration proceeding and result relied upon by Gould and First Trust presented the Court with no difficulty in applying the general rule to this case (App. 10-12).

REASONS WHY THE PETITION SHOULD NOT BE GRANTED

Petitioners have failed to show any substantial reason, in line with the guidelines set forth at Rule 17.1 of this Court's Rules, why the Petition should be granted. Thus, the Court of Appeals' decision is not in conflict with that of any other court of appeals or state court of last resort. The decision disposes of no question of federal law not previously addressed by this Court; nor is the decision inconsistent with any decision of this Court on the questions presented.

A.

Petitioners' Claims Were Resolved Via Arbitration; Arbitration Is the Preferred Forum for Resolution of Labor Contract Disputes

Petitioners' claim is that they are entitled to receive full pension benefits. Basis of their claim is a pension agreement negotiated by their chosen collective bargaining representative, UAW, with their employer, Gould. The issue therefore is whether or not the agreement will support the claim.

That issue was resolved in an arbitration forum convened at the instance of Petitioner's union representative, as Petitioner concedes (Petition, p. 4).

Petitioners now seek to try the issue all over again in a different forum, the District Court. The Court of Appeals held, however, that they may not do so; they are bound by the results of the arbitration proceeding. Therefore, the essential questions posed by the instant petition are: (1) whether or not arbitration was the proper forum for resolution of Petitioners' claims and (2) whether or not Petitioners are bound by the results of the arbitration proceeding.

We respectfully submit that those questions were resolved below in line with well settled legal principles; no novel or important issue was raised; and no further review by this Court is warranted. As the Court of Appeals aptly noted:

"If there is any expression of public policy pertaining to labor-management relations that has emerged loud and clear in today's jurisprudence it is the national policy favoring arbitration of labor disputes. . . . The Supreme Court has established a strong presumption favoring arbitrability:

"'[T]o be consistent with congressional policy in favor of settlement of disputes by the parties through the machinery of arbitration, . . . [a]n order to arbitrate the particular grievance should not be denied unless it may be said with positive assurance that the arbitration clause is not susceptible of an interpretation that covers the asserted dispute. Doubts should be resolved in favor of coverage.'

"[Citing] *United Steelworkers v. Warrior & Gulf Navigation Co.*, 363 U. S. 574, 582 (1960)." (App. 9-10)

Nothing in the Petition indicates why the foregoing principle was not an appropriate predicate of the Court of Appeals' decision in this case, or why pension agreement disputes are any less susceptible to resolution via arbitration than other questions

of labor contract interpretation. No opinion of this or any other Court to the contrary is cited by Petitioners.⁵

B.

Federal Courts Are Without Jurisdiction to Relitigate Labor Contract Disputes Previously Resolved in Arbitration

The Court of Appeals' decision holding the arbitration award a bar to relitigation of the pension agreement dispute certainly reflects established legal principle:

[T]he question of interpretation of the collective bargaining agreement is a question for the arbitrator. It is the arbitrator's construction which was bargained for; and so far as the arbitrator's decision concerns construction of the contract, the courts have no business overruling him because their interpretation of the contract is different from his."

United Steelworkers v. Enterprise Car & Wheel, 363 U. S. 593 (1960).

In addition, the question whether a District Court has jurisdiction even to review an award is foreclosed by this Court's decision in *United Parcel Service v. Mitchell*, 451 U. S. 56, 101 Sup. Ct. 1559 (1981). In that case, the Court held that the limitations period federal courts must honor in connection with actions brought to review arbitration awards is the applicable state statute of limitations. The instant action was filed nearly two and one-half years following issuance of the award.

⁵ Petitioners' sole argument that this pension agreement interpretation question should not have been submitted to arbitration rests upon a provision in the pension agreement establishing a board to resolve questions of individual application (Petition, p. 16). The Court of Appeals rejected the argument (App. 12-13). Since both the general arbitration provision and the one cited by Petitioners involve impartial resolution of disputes, however, the matter is a non-issue and certainly not one worthy of this Court's review.

The applicable Pennsylvania limitations period was 90 days (now 30 days under amended legislation). 5 Pa. Stat. Ann. § 161 *et seq.*, § 173. See *S.E.I.U., Local 36 v. Office Center Services*, ____ F. 2d ____, 109 LRRM 2552 (3d Cir. 1982).

That Petitioners seek to recharacterize their action as one sounding in fraud does not take the matter out of the foregoing principles. *United Parcel Service v. Mitchell*, *supra*.

C.

Petitioners Are Bound by the Results of the Arbitration Award

The Court of Appeals' decision holding Petitioners, as distinguished from their Union, bound by the Award raises no unresolved, or controversial issue. See *United Parcel Service v. Mitchell*, *supra*, 451 U. S. at 62, n. 4:

"An arbitration award stands between the employee and any relief which may be awarded against the company."

D.

Petitioners Have Not Raised Any Other Issue Warranting Review

Petitioners' contention that this Court should review the Court of Appeals' decision for consistency with *Allied Chemical and Alkali Workers v. Pittsburgh Plate Glass Co.*, 404 U. S. 117 (1971) should be rejected. *Pittsburgh Plate Glass* answered the question whether employers who are subject to federal labor law must bargain with unions representing *active* employees over benefits paid to *retired* employees.

The instant case presents no such question. Here, Gould and the UAW merely submitted to arbitration a dispute over the meaning of an agreement they previously made respecting pension entitlements. The Arbitrator issued an award directing that additional funds be made available for pensions. He

directed the parties as to the formulae by which to calculate the amount. Finally, he directed that the funds be applied in line with the prioritized order of asset distribution set forth in the agreement.

The Court of Appeals' characterization of the foregoing as an adjudication of existing rights rather than, as Petitioners urge, a negotiation to alter rights, obviously was correct and requires no exercise of supervision by this Court.

For the foregoing reasons, we urge on behalf of Gould and First Trust that the petition not be granted.

Respectfully submitted,
GOULD, INC.

ROBERT E. MANN
MARK A. LIES, II
J. STEPHEN POOR
SEYFARTH, SHAW, FAIRWEATHER
& GERALDSON
55 East Monroe Street
Suite 4200
Chicago, Illinois 60603
(312) 346-8000

JOHN MARKLE, JR.
MARKLE M. WILCOX
DRINKER BIDDLE & REATH
1100 Philadelphia Nat'l Bank Bldg.
Philadelphia, Pennsylvania 19107
(215) 988-2700

Respectfully submitted,

FIRST TRUST COMPANY OF ST. PAUL,
MINNESOTA

RICHARD H. KYLE, JR.
BRIGGS & MORAN
First National Bank Building
St. Paul, Minnesota
(612) 291-1215